

AMERICAN PETROFINA COMPANY OF TEXAS

IBLA 79-279

Decided June 13, 1979

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting oil and gas lease offers N-21429 and N-21430 for failure to pay advance annual rental timely.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First Qualified Applicant -- Oil and Gas Leases: Rentals

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the first year's advance rental, that rental must be received by the proper office within the prescribed 15 days. Automatic disqualification, stemming from failure to pay timely, will not be avoided by allegations that payment was mailed far enough in advance to arrive at BLM timely.

APPEARANCES: Robert E. Anderson, Esq., Dallas, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The American Petrofina Company of Texas (Fina) filed simultaneous noncompetitive oil and gas lease offer drawing entry cards for parcels NV 46 and NV 47 in the November 1978 drawing in the Nevada State Office, Bureau of Land Management (BLM), which cards were drawn with first priority. On December 21, 1978, BLM sent Fina notices that it was entitled to leases on these parcels, and that it was required to pay the first year's advance annual rental on them within 15 days of its receipt of this notice on pain of rejection of its offers under restrictive stipulations by this same date.

The record indicates that Fina received these notices on December 4, 1978. Thus, the advance rental was due no later than December 19, 15 days later. <sup>1/</sup> Fina submitted the advance rental under cover letter dated December 18, 1978, in an envelope bearing a postage meter stamp showing the date of December 18, 1978, from Dallas, Texas, to the BLM office in Reno, Nevada. The material submitted by Fina along with its payments is date-stamped by BLM as having been received at 10 a.m. on December 26, 1978.

On December 21, 1978, 2 days after the deadline, BLM, not yet having received Fina's advance rental, notified the offeror whose drawing entry cards for these parcels had been drawn with second priority that it was now entitled to receive these leases. On February 12, 1979, BLM issued a decision rejecting Fina's offers because it had failed to submit the first year's advance annual rental within 15 days of its receipt of notice that payment was due, in violation of 43 CFR 3112.4-1. Fina (appellant) filed a timely notice of appeal from this decision.

[1] BLM properly rejected appellant's offers. The requirements of 43 CFR 3112.4-1 are clear, and the penalty for failing to meet them is explicit: "Rental must be received in the proper office of the Bureau of Land Management within fifteen (15) days from the date of receipt of notice that payment is due. The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease, \* \* \*" (emphasis supplied). This requirement is strictly enforced by the Department. Donald E. Jordan, 41 IBLA 60 (1979); Milton Knoll, 38 IBLA 319 (1978); Gavino San Diego, 36 IBLA 300 (1978); Susan Dawson, 35 IBLA 123 (1978); Charles M. Brady, 33 IBLA 375 (1978); and cases cited. Appellant's payment was not received by BLM until December 26, 1978, <sup>2/</sup> or 7 days too late. Accordingly, BLM properly determined that appellant was disqualified to receive the leases and rejected its offers.

Appellant argues that it mailed the payments on December 14, 1978, 5 days prior to its due date at BLM, and that their late arrival ought to be excused, as it had mailed them far enough in advance to allow for reasonable delays in the mails. We note that this argument is based on a misstatement of fact. Appellant mailed its payment on December 18, 1978, only 1 day before it was due, as indicated by the date on its cover letter and on the postage meter stamp on the envelope, rather than on December 14.

In any event, under 43 CFR 3112.4-1, BLM's failure to receive advance annual rental payments timely is fatal to the validity of the

---

<sup>1/</sup> This computation properly does not count the day the notice was received.

<sup>2/</sup> BLM's statement in its decision that payment was received on December 27, 1978, appears to be in error.

offers, regardless of how far in advance the payments are mailed, or whether delivery was delayed by the Postal Service. Donald E. Jordan, 35 IBLA 290, 293 (1978); Edgar C. Bennington (On Reconsideration), 28 IBLA 355, 358 (1977); Frank DeJong, 26 IBLA 327, 328 (1977); and cases cited. This is because the person owing the annual rental must cause a proper form of remittance of the rental to be received by BLM, and, until such time it is received, no "payment" of annual rental has occurred. Mobil Oil Corp., 35 IBLA 265 (1978); Lloyd M. Patterson, 34 IBLA 68 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

Joan B. Thompson  
Administrative Judge

